

# **BAZELON CENTER FOR MENTAL HEALTH LAW**

**For people with serious mental illnesses:**

## **FINDING THE KEY**

**to successful transition from jail to the community**

### **An Explanation of Federal Medicaid and Disability Program Rules**

#### **FOREWORD**

The number of people with severe mental illnesses incarcerated in jails and prisons is on the rise. Every year, thousands of people with mental illnesses such as schizophrenia or manic depression are arrested as a result of behavior stemming from their illness. Most of these men and women would be more effectively and appropriately helped through the provision of mental health services. Nonetheless, many will serve a sentence and, upon release, will be left without access to the services and support critical to breaking the cycle of recidivism.

With the promise of community mental health unfulfilled, far too many of these individuals were caught in a revolving door, leading into and out of the state hospital. Today the revolving door opens into the correctional system. We can change this picture. Clearly, without income (to pay for housing, food and other necessities) and without health care coverage (to ensure access to health and mental health treatment and medications), most will not be able to exit that revolving door.

One important part of any effective solution is to ensure that people with serious mental illnesses are connected with appropriate community agencies as they are released and are enrolled in the federal entitlement programs that are specifically designed to provide the supports they need: federal disability payment programs and health coverage through Medicaid and Medicare. This booklet describes these federal programs' complex and interrelated rules and some options for state and local officials to use them more effectively. It is designed to contribute to the development of a more appropriate system of care for individuals with serious mental illnesses and to reduce recidivism. For the support that enabled us to develop and produce it, we acknowledge with deep appreciation the John D. and Catherine T. MacArthur Foundation, the Public Welfare Foundation and the Open Society Institute's Center on Crime, Communities and Culture.

The Bazelon Center for Mental Health law is a national nonprofit public-interest organization formed in 1972 to advance the legal rights of people with mental disabilities and ensure their equal access to the services and supports they need for participation in community life. One of our principal goals is to end the punishment of people with

mental disabilities for the failures of systems designed to meet their needs. We invite your participation toward this goal through the actions outlined here.

Robert Bernstein, Ph.D., Executive Director, Bazelon Center for Mental Health Law

## INTRODUCTION

Growing numbers of men and women with severe mental illnesses are in jail or prison. Many cycle through corrections facilities repeatedly, costing criminal justice systems and communities significant resources and causing great pain to themselves and their families. This paper examines a major cause of such recidivism and outlines some ways for administrators and policymakers to address it.

According to the U.S. Department of Justice, 284,000 men and women in jail have a severe mental illness such as schizophrenia or manic depression 16% of all inmates.<sup>1</sup> Often the event precipitating their arrest is directly linked to both their lack of income and their unmet need for services, such as mental health and addiction treatment, and supports, such as housing and employment, that are essential if they are to maintain themselves in the community.

Access to mental health and addiction services and to the income support that can pay for housing is generally through federal entitlement programs. Yet, whether because relevant federal rules are not well understood or because state implementation of them is problematic, many people with severe mental illnesses unnecessarily lose their federal entitlements while in jail.

Others who could qualify do not apply because they lack timely assistance from jail personnel or community mental health providers to file an

application. Very few states and localities have adopted policies and procedures for assisting inmates with severe mental illnesses in claiming or maintaining federal benefits upon their release.

The resulting poverty and lack of access to health care can lead to incidents that greatly increase the likelihood that these individuals will have further contact with law enforcement. Without income support or health coverage, many people with severe mental illnesses become caught in a cycle of recidivism.

This paper describes the federal entitlements-income support through the Supplemental Security Income (SSI) and Social Security Disability Income (SSDI) programs, and health coverage under Medicaid or Medicare, which together can enable someone with a severe mental illness to transition successfully from jail to community life. In it we also suggest ways for states, localities and advocates to improve the situation.<sup>2</sup>

During an eight-month sentence for purse-snatching in New York City's jail at Rikers Island, B.H. received treatment for schizophrenia and addiction. He was stabilized on medication, but when released, he had no way to get the medication, clinic services and substance-abuse treatment he needed and wanted. He applied for Medicaid, but had to wait 45 to 90 days for approval of his eligibility. Until then, he kept going to the hospital emergency room-often waiting all day-for five-day supplies of medication. This became so stressful that he attempted suicide. Within a few weeks he succeeded. The notice that B.H.'s Medicaid application was approved came five days after his funeral. Inmates leaving Rikers Island are put on a bus, driven to the Queens Plaza transportation hub and released between 2 and 4 a.m. with three subway tokens. They are left with no medication and have no Medicaid card. Like B.H., most of those with mental illnesses do not make it. They become homeless, sleeping in parks, eating out of garbage cans, begging for food and money while their condition deteriorates. Eventually, the police will pick them up again.

## **Income-Support Benefits**

People with disabilities, including those disabled by a severe mental illness, are entitled to monthly income-support payments through two different federal programs: SSI for those with low incomes and SSDI for people who have worked and paid Social Security taxes. Many people whose SSDI benefit is too low because they worked only a short time can qualify for both SSDI and SSI.<sup>6</sup>

These federal disability benefits are linked with health care coverage:

- In most states, SSI recipients automatically have Medicaid coverage. Where they do not, a separate application will enable most to secure Medicaid.<sup>7</sup>
- All SSDI recipients qualify for Medicare after a 24-month wait. People who have been getting SSI or SSDI payments when arrested cannot receive benefits while in jail. But whether and how they remain eligible when released varies.

## **When Inmates Lose SSI**

Generally, the length of time a person is in jail determines whether, or when, federal SSI benefits will be affected. The monthly payments are nearly always interrupted while someone is in jail, but benefits are payable up until the time of incarceration and sometimes a little longer, and can resume shortly thereafter, as long as the person has been in jail less than a year (see box).

When incarceration is for less than 12 consecutive months, the federal Social Security Administration (SSA) considers this a "suspension" and payments should resume soon after the person leaves jail-as long as SSA is informed of the release and the person submits a simple form with evidence showing that he or she again meets the financial requirements.<sup>8</sup> SSA presumes that these individuals remain disabled under federal rules.

To complete this reapplication process, the Social Security office must be able to verify that the person has been released. Families, community mental health workers or jail administrators can assist people in this situation by making sure SSA is alerted to the need to resume benefits and told where to send the checks.

People who have been incarcerated for a year or more and have had their benefits suspended for at least 12 months must file a completely new application for SSI upon their release. They will have to show that they are still disabled under the eligibility standards (see box).

### **How Time in Jail Affects Eligibility for SSI Benefits**

**In jail less than one calendar month:** Inmate remains eligible for SSI and should receive the full cash benefit.

For example, someone who enters jail on February 10 and is released before midnight March 31 should lose no cash payments.

**In jail throughout a calendar month:** Inmate will have SSI payments suspended but not terminated.<sup>3</sup> This means that an inmate who is in jail on the first of the month and stays the whole month is not eligible for a cash payment for that month.

For example, someone who enters jail on February 10 and is not released until April 1 will not lose February's payment (not being in jail for the whole month) but will lose the March payment.

**In jail at least one month and then released after the first of another month:** Inmate can receive an SSI cash payment for part of the month in which he or she is released.<sup>4</sup>

For example, someone who enters jail on February 10 and is released May 15 the same year will not lose the February payment, but will lose March and April benefits. In May, the person will be eligible for half of the monthly benefit. While this will be paid eventually, it could be delayed if the Social Security Administration (SSA) is not informed promptly that the individual has been released.

**In jail for 12 consecutive calendar months:** Inmate's eligibility is terminated.<sup>5</sup> Technically, termination occurs after 12 continuous months of suspension. Only full months count.

For example, someone who enters jail on February 1st of one year and is released on February 10th the following year will have SSI eligibility terminated because benefits were suspended for 12 continuous months. This person will have to file a new application and resubmit evidence of disability. But someone who enters jail on February 10th of one year and is released on February 10 a year later has benefits suspended for March through January and prorated for February of the second year. This person's eligibility will not be terminated because benefits were not suspended for 12 continuous months.

### **When Inmates Lose SSDI**

People who qualify for SSDI remain eligible as long as they meet the federal definition of disability. SSDI benefits are suspended following a conviction and confinement in jail for 30 days or longer. But SSDI benefits are not terminated, no matter how long the term. However, Social Security must verify that the person is no longer in a correctional facility before payments can resume. Specifically:

- SSDI benefits are suspended if someone has been convicted and confined in jail longer than 30 days, whether or not it is a full calendar month.<sup>9</sup>
- SSDI benefits are suspended for any 30-day period during which an individual is confined in a jail or prison in connection with a verdict of not guilty by reason of insanity or guilty but insane, or a finding of incompetence to stand trial.<sup>10</sup>
- SSDI benefits that were already paid are recovered. For example, someone arrested on the fifth of the month who has already cashed that month's check will have future checks reduced until the benefits paid for that month are recovered.

Federal rules on payment of SSDI benefits to inmates were different for people incarcerated before April 1, 2000.<sup>11</sup> The above description applies to everyone incarcerated since that date. A worker's dependents, such as a spouse or child, sometimes receive SSDI.

These payments are not suspended or terminated when the worker is in

jail; they continue even when the worker loses benefits.<sup>12</sup>

### **Qualifying for SSI or SSDI on Release**

Inmates not receiving benefits when sent to jail can apply for SSI or SSDI while incarcerated, in anticipation of their release. They usually need assistance, however, to obtain the appropriate forms and gather the necessary evidence.

Normally, review of an application takes about three months, so an inmate should apply as long as possible before the release date.

SSA will assess eligibility based on the application. If it is approved before the inmate's release, payments will begin as of the first day of the calendar month following release.<sup>13</sup> If the application is approved after the inmate is released, benefits are payable at that time, and SSI (but not SSDI) benefits are backdated to the first day of the month following release.

An individual with a severe mental illness may also qualify for advance emergency payments. To be eligible, people must demonstrate:

- a financial emergency;
- that they are likely to qualify for assistance; and
- that they have not already received assistance for that benefit period.

### **Why Benefits Are Lost and What Can Be Done About It**

Jails have an incentive to inform SSA that a person is confined; they receive federal payments when they supply information resulting in suspension or termination of SSI or SSDI benefits. But they have no such incentive to advise SSA when someone is released so that benefits can be restored.

Jails and prisons can enter into agreements with SSA to provide monthly reports of inmates' names, Social Security numbers, dates of birth, confinement dates and other information. The institution receives \$400 when this information is sent within 30 days of the inmate's arrival and \$200 if it is sent within 90 days.<sup>14</sup> This information should-but does not always-include an estimated release date.

Jails, prisons and hospitals can also enter into pre-release agreements with the local Social Security office, which will help their staff learn the rules for pre-release processing of applications and reapplications for SSI.<sup>15</sup> When such an agreement exists, SSA processes claims more quickly, inmates have assistance in gathering the information needed to support their application, and benefits are often payable immediately upon release or shortly thereafter. (See box at right.)

### **Health Care Coverage**

Medicare and Medicaid are two sources of health coverage. People eligible for SSDI (and those over age 65) are covered by Medicare, after a 24-month wait. Low-income individuals qualify for Medicaid in various ways; in most states anyone who qualifies for SSI is covered. Medicaid provides better mental health care coverage than Medicare.

### **Medicaid**

Medicaid is a joint federal-state program. To qualify, a person must fall into one of several eligibility categories. Once eligible, the individual is covered by a package of services defined by the state under broad federal requirements. Federal law requires some services to be available, such as physician services and general hospital care. Others are offered at state option—among them, various community-based mental health clinic and rehabilitative services. As a result, Medicaid coverage varies from state to state. However, all states cover a significant array of mental health services for people with severe mental illnesses.

Most jail inmates with severe mental illnesses have incomes below the Medicaid limit and may therefore be eligible for coverage. Usually their eligibility for SSI is what qualifies them for Medicaid. In 32 states, SSI eligibility results in automatic Medicaid coverage. In seven other states, SSI recipients are automatically eligible for Medicaid but must submit a separate application for Medicaid. In the 11 states that use different rules,<sup>16</sup> people who receive SSI nearly always qualify for Medicaid, although they must go through a separate application process. Some low-income individuals do not receive SSI or SSDI disability benefits, either because their disability is not severe enough to meet strict federal standards or because they have not applied. But they may still be eligible for Medicaid. Currently, 39 states cover people who become "medically needy" when their income is reduced by high health care expenses.<sup>17</sup> States can extend Medicaid coverage to people in other categories, such as low-income families or individuals who, without access to community-based services, would be forced to live in a health care institution.

### **Pre-Release Agreements**

Pre-release agreements are formal written agreements between penal institutions and local Social Security offices.

**Jails agree to:** notify SSA of inmates likely to meet SSI criteria who will be released within the next 30 days; provide to SSA current medical evidence and nonmedical information that may support the inmate's claim; provide to SSA the anticipated release date and notify SSA if that changes; and notify SSA when the inmate is actually released.

**SSA will:** train jail staff about SSI rules and work with them to ensure that the application procedures work smoothly; provide a contact person at Social Security to assist jail staff with the pre-release procedure; process reapplications and new applications as quickly as possible; and promptly notify the jail of the decision on the released inmate's eligibility.



Also, a number of states use waivers of federal rules to cover other groups of uninsured low-income people through Medicaid.

Information about eligibility rules can be obtained from the state Medicaid agency.

### **Medicaid Rules on Jail Inmates**

Under Medicaid law, states do not receive federal matching funds for services provided to individuals in jail.<sup>18</sup> However, federal law does not require states to terminate inmates' eligibility, and inmates may remain on the Medicaid rolls even though services received while in jail are not covered.<sup>19</sup> Accordingly, someone who had a Medicaid card when jailed may be able to use it again immediately after release to obtain needed services and medication.

However, the situation for inmates who qualify for Medicaid through their eligibility for SSI can be complicated. Everyone whose SSI eligibility is terminated will lose Medicaid. When SSI benefits are suspended due to incarceration, states have the option to-and generally do-terminate an inmate's Medicaid eligibility.

When an inmate's Medicaid eligibility is not tied to SSI, the state has the flexibility under federal law to suspend the eligibility status during incarceration. But the federal Medicaid rules establish only minimum requirements, while states are permitted to impose more restrictive policies.<sup>20</sup> Unfortunately, most states have procedures that terminate Medicaid eligibility automatically any time someone is in jail.<sup>21</sup>

Under federal rules, eligibility should be reinstated upon release unless the person is no longer eligible (see box ). Before ending someone's Medicaid eligibility, states must make a redetermination of the person's potential for qualifying under all the state's eligibility categories.<sup>22</sup> This redetermination need not be conducted until release is imminent, but if the released inmate still meets the state's eligibility standards for Medicaid, eligibility should not be ended. Regrettably, this redetermination often does not occur.

Even inmates who keep their Medicaid eligibility may lose Medicaid coverage unnecessarily because of procedures in correctional facilities. Something as simple as the loss of a Medicaid card following arrest can make it impossible to obtain mental health services from Medicaid providers upon release. This often happens because jails take possession of all personal property when booking a person. In many jurisdictions, this property is destroyed if it is not claimed within a certain time. Inmates cannot claim the property themselves and if they have no one to do it for them, their Medicaid card is destroyed.

There is one exception to the rule that no Medicaid reimbursement is available for jail inmates. When someone is transferred from a jail to a hospital for acute health services (for example, an appendectomy), the hospital can claim federal Medicaid reimbursement for this service. Also, if a person is in an institution temporarily pending "other arrangements appropriate to his needs," services may remain Medicaid-reimbursable.<sup>23</sup>



Generally, however, mental health services furnished to inmates must be funded by correctional systems or state or local mental health systems, not by Medicaid.

### **Coverage After Release**

When Medicaid eligibility is linked to SSI, a person may have to jump through many administrative hoops before Medicaid benefits resume, depending on state policy and administrative procedures. For example, a former inmate may have to visit the local SSA and state Medicaid offices to confirm that he or she has been released and complete other administrative paperwork. As a result, people on SSI may have no health care coverage during the time between their release from jail and reinstatement of their SSI payments—normally at least one or two weeks.

One way services can be covered immediately after someone is released from jail is for the state to continue the person's Medicaid eligibility pending reinstatement on SSI, which will in turn restore federal Medicaid eligibility. Once the individual's SSI is reinstated, the federal government will provide retroactive reimbursement for Medicaid-covered services furnished for up to three months after the person left jail. This means that even though federal dollars may not be available immediately for services provided after release to former inmates whose Medicaid eligibility is tied to SSI, nearly all of these individuals will eventually be covered.

Providers can be paid by the state and the state will eventually receive federal funds. The state will remain fully liable only for services to the very few individuals who are not found re-eligible for SSI and Medicaid.

### **Medicare**

Medicare coverage is also suspended when someone is incarcerated. It will not resume until the person's SSDI payments resume. For more information on Medicare, call 1-800-MEDICARE (1-800-633-4227).

### **Conclusion**

Federal rules on how and when inmates receive benefits are complex, but they do provide opportunities for inmates to obtain federal entitlements upon release. Instead of

### **Federal Rules on Medicaid Reinstatement**

Jail inmates can have their Medicaid suspended. Upon release, federal policy requires that their benefits resume. Many individuals will be incarcerated for so long that their Medicaid benefits will have been suspended for longer than the state's customary period of time after which a redetermination of eligibility is conducted (time varies by state). The state will reassess whether these inmates remain eligible for Medicaid. However, this assessment should be conducted prior to release because, under federal policy, a state may not drop someone from Medicaid without determining whether or not the person can qualify under any of the state's eligibility categories.<sup>24</sup> States are permitted to use simplified procedures for redetermining the eligibility of individuals who have been incarcerated, according to federal HCFA officials.<sup>25</sup> Regardless of the simplified procedures used, unless a state has determined that an individual is no longer eligible for Medicaid, States must ensure that incarcerated individuals are returned to the rolls immediately upon release. Thus, allowing individuals to go directly to a Medicaid provider and demonstrate his/her Medicaid eligibility...<sup>26</sup>

fostering recidivism, states and localities should support access to the benefits needed by people with severe mental illnesses who are released from jail.

## **FORGING THE KEY**

### **Recommendations for state and local policies to ensure successful transition from jail to community for people with severe mental illnesses**

This section offers information and suggestions for advocates, state and local policymakers and other interested parties on how policies and procedures at the state and local level can facilitate access to federal benefits needed by people with mental illnesses who have served time in jail. Federal rules give states and localities considerable flexibility, and some quite simple changes can make federal benefits more readily available to inmates leaving jail or prison. The improved access to benefits resulting from these changes will significantly affect inmates' ability to make a successful transition to the community, thus reducing the likelihood of recidivism.

Equally needed are programs that can help avoid the incarceration of people with serious mental illnesses by affording them access to services and supports in the community.

State and local policies should ensure:

- prompt reinstatement of federal Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) disability benefits after release;
- immediate access to Medicaid upon release;
- assistance to individuals leaving correctional facilities so they can apply for SSI, SSDI and Medicaid benefits prior to release;
- continuity of care for those arrested; and
- diversion of individuals from criminal justice when mental health services and supports would be more appropriate.

#### **What States Should Do**

To accomplish these goals, states should put in place the following policies and procedures:

##### **Toward Reinstating SSI/SSDI**

- Federal and state entitlement policies must be clearly explained to all local jail administrators, mental health forensic facility and prison administrators, and community mental health providers.
- State prisons should be required to have pre-release agreements with SSA to assist inmates in applying or reapplying for SSI benefits.

#### **Staff Help Inmates Apply for Benefits**

In New York's Rensselaer County, jail staff are trained to help inmates complete entitlement forms so they can access benefits more quickly. Inmates are also given a picture ID to facilitate their re-entry and, if necessary, are accompanied to the local Social Security office to finish their application process. As a result, many get their benefits within 24 hours of release.

In Jacksonville, Florida, staff from the local social services agency come into the jail to help inmates complete benefit forms before they are released.

Other mechanisms used in some jurisdictions include arranging for SSA staff to come to the jail to do the application paperwork or having probation office staff located in the jail to help inmates transition to the community.

- States should encourage local jails to enter into pre-release agreements with their local Social Security office and provide jail administrators information about how to enter into such agreements.
- State prisons and local jails must be given the resources to pay for staff to assist inmates in applying or reapplying for benefits.
- States should provide sufficient resources to local community mental health programs for case managers to assist inmates in applying for SSI before release and help them obtain needed services, housing and other supports after release.

### **Toward Ensuring Medicaid Eligibility**

- State Medicaid policy should permit inmates in jail or prison to keep their Medicaid eligibility (as federal rules permit) throughout their incarceration.
- State Medicaid procedures should ensure that inmates who are about to be released are reinstated on Medicaid and that providers are paid, even while redeterminations of eligibility required under federal law are being conducted.
- State procedures must ensure that inmates are not removed from Medicaid when SSA notifies the state that their cash benefits are suspended due to incarceration.<sup>27</sup> State Medicaid agency procedures must ensure that this notification results only in suspension, not termination, of the inmate's Medicaid coverage.
- State policy should authorize Medicaid coverage for all individuals with serious mental illnesses who are released from jail or prison and who have applied or reapplied for Medicaid or SSI benefits. Pending federal approval of the application, the state should pay 100% of the individual's service costs. It can claim retroactive reimbursement from the federal government for the service costs of the great majority who eventually receive Medicaid.
- State policy should explicitly ensure that inmates who remain eligible for Medicaid have a Medicaid card in hand when they are released so they can access needed services immediately.

### **State Medicaid Programs Pay When the Federal Government Does Not**

Two states have policies for using state funds to provide Medicaid coverage. In New York, state funds pay for psychiatric medications for people leaving jail or prison, provided the individual applies for Medicaid, and for transition managers to assist former inmates in filing benefit claims. In Lane County, Oregon, jail inmates' state Medicaid payments continue for 14 days after arrest. After that, benefits are suspended, not terminated, so they can be reinstated immediately upon release.

### **Toward Continuity of Care**

Individuals with mental illnesses who are arrested should continue to have access at least to basic mental health services (particularly counseling and appropriate medications) while in jail as well as without interruption after release.

Although federal Medicaid will not pay for services in jail, people who are held temporarily pending trial or other disposition of their case still need the medications that have proven effective for them and must stay connected to mental health system services. Policies to accomplish this include:

- authorizing the use of state mental health funds for services to individuals who have just been arrested but have not yet been adjudicated; and
- ensuring that either the correctional system or the mental health system provides appropriate mental health services following adjudication.

The need for continuity of care upon release from incarceration has been addressed to date by one federal circuit court. According to the appeals court for the Ninth Circuit, the Eighth Amendment requires states to ensure that a released inmate who has been receiving medication while incarcerated leaves the facility with "a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply."<sup>28</sup> This decision is now law in California, Nevada, Arizona, Oregon, Washington, Montana, Idaho, Alaska and Hawaii.

At least one state court has gone even further. Rikers Island jail in New York was releasing inmates who have mental illnesses in the middle of the night with just \$1.50 and two subway tokens. Relying on state law, the court ordered the city to provide "adequate discharge planning," the absence of which risks "a return to the cycle of likely harm to themselves and/or others" and their resulting rearrest.<sup>29</sup>

### **Toward Avoiding Jail**

State mental health and corrections policy should proactively facilitate diversion of people with serious mental illnesses from jail.

- The state must encourage and fund jails and local mental health programs to collaborate in ensuring access to appropriate community-based services and supports in place of jail time.

### **What Localities Should Do**

The goals of the state policies described above should also be reflected at the local level. Local jurisdictions can take a number of steps to ensure this.

- Jail personnel should be trained in federal and state rules for SSI, SSDI, Medicaid and Medicare.
- Jails should enter into pre-release agreements with SSA and collaborate with their local Social Security offices to help inmates obtain SSI and SSDI benefits as soon as possible after release.
- Jails should have staff (or should contract with community mental health providers) to assist people who do not already have these benefits in applying for them and to assist those who had benefits when arrested in applying for reinstatement as they are released.
- Jails can ensure that everyone entering jail with a Medicaid card gets the card back when released or has the card given to someone designated by the inmate.

#### **Collaborations with Local Programs**

In Springfield, Massachusetts, jail inmates are assigned to one of four community health centers and staff from that center come in to furnish health and mental health services. This provides continuity upon release because the same staff see the person in the community. Springfield also uses students from a local dental school to provide dental services to inmates. A similar model could allow mental health treatment to be furnished through medical residency programs, providing experience for the doctors and benefits for inmates.

- Jails can collaborate with community mental health providers to ensure that inmates have access to appropriate services and supports as soon as they are released and to improve continuity of care for inmates.
- Law enforcement agencies and jails should develop collaborative relationships with local mental health authorities, so that people who would be better served with mental health services and supports are not arrested or are diverted to the community mental health service system soon after their arrest. Programs may include specialized crisis-response teams or pre-booking or post-booking programs.

### **The Role of Local Community Mental Health Providers**

Community mental health agencies need to focus more attention on this population.

They should:

- have programs and policies to serve those most in need, particularly people with mental illnesses who are at risk of arrest, those arrested but diverted into treatment, and those released from jail or prison;
- ensure that their services are accessible for those most in need 24 hours a day, seven days a week; and
- ensure that case managers understand all federal and state entitlement rules and that they assist people who are arrested in maintaining or securing these entitlements.

## What Advocates Can Do

Families and other advocates for people with mental illnesses can facilitate the adoption of appropriate policies, such as those outlined in this paper. For example, they might:

- seek review of all state policies on Medicaid benefits for people who are arrested and suggest improvements in the policies to ensure access to benefits upon release;
- work for adoption of policies to facilitate access to state Medicaid immediately upon release, such as state funding of services pending a released inmate's reinstatement on SSI or approval of initial federal Medicaid eligibility;
- collaborate with jail administrators and community mental health programs to ensure that all parties have the training to correctly understand federal and state policies on entitlements for jail inmates with mental illnesses;
- develop and promote a system to encourage families and others to give jails information on the benefit status of people with mental illnesses who are arrested;
- encourage jails to enter into pre-release agreements with SSA and encourage community mental health agency staff to assist inmates in applying or reapplying for benefits prior to release;
- support the development of diversion programs for people with mental illnesses when mental health treatment is preferable. Such collaboration should also ensure smooth transitions for inmates with mental illnesses leaving jail or prison; and
- lobby the state legislature and pressure state mental health authorities to address the needs of people with mental illnesses who are most in need and at risk of arrest by creating more effective community mental health systems.

## Call for Action

Jail inmates who have a severe mental illness cannot successfully transition back into the community unless they have both adequate resources and access to mental health services. It is sound public policy—from a public-safety and economic viewpoint as well as from a humane perspective—to ensure released inmates' access to the benefits that can enable them to live with dignity and freedom in the community.

Until state and local government policies and procedures change, inmates with serious mental illnesses will remain without access to essential income support and health and

### For More Information

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mental health services upon their release. The inevitable result is that many will soon be arrested again.

## Notes

1. Bureau of Justice Statistics (1999). Mental Health and Treatment of Inmates and Probationers. NCJ-174463. Washington, DC: US Department of Justice.
2. This paper describes rules for those incarcerated in jail. Prison terms are generally longer than jail terms and the offenses committed are generally more serious. As a result, many states have more stringent policies with respect to prison inmates. Federal rules, however, are essentially the same for those in jail and those in prison
3. 20 C.F.R. § 416.211.
4. 20 C.F.R. § 416.421.
5. 20 C.F.R. § 416.1335.
6. SSDI benefit amounts depend on wages and length of time employed. For more information on the complex eligibility rules for SSI and SSDI, contact a local Social Security Office or call 1-800-772-1213.
7. The following states do not automatically grant Medicaid coverage to those on SSI: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma and Virginia.
8. 20 C.F.R. § 416.1321(b).
9. 42 U.S.C. § 402(x)(1)(A)(i), as amended by Public Law 106-170.
10. 42 U.S.C. § 402(x)(1)(A)(ii) as amended by Public Law 106-170.
11. The old rules will continue to apply to individuals whose jail or prison confinement began before April 1, 2000. Although it is not described here, the Bazelon Center has a memorandum that lays out those rules. If you would like a copy, send a request with a stamped (\$34) self-addressed envelope to: Bazelon Center Publications Desk, 1101 15th Street N.W., Suite 1212, Washington D.C. 20005.
12. 20 C.F.R. § 404.468(a).
13. 20 C.F.R. § 416.211.
14. 42 U.S.C. § 1382(e)(1)(I) as amended by Public Law 104-193, the Personal Responsibility & Work Opportunities Reconciliation Act of 1996 (SSI-incentive effective for reporting individuals whose confinement began after March 1, 1997); 42 U.S.C. § 402(x) as amended by Public Law 106-170, the Ticket to Work & Work Incentives Improvement Act of 1999 (SSDI-incentive effective for reporting individuals whose confinement began after April 1, 2000).
15. Pre-Release Procedure for the Institutionalized, authorized under Section 1631(m) of the Social Security Act, 42 U.S.C. § 1383(m). See POMS SI 00520.900-930 (Eligibility).
16. See note 7.
17. 42 C.F.R. § 435.300. States that do not cover the medically needy population under Medicaid are: Alabama, Arkansas, Arizona, Colorado, Delaware, Indiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, South Carolina, South Dakota and Wyoming.
18. Social Security Act § 1905(a)(A) and 42 U.S.C. § 1396(d)(a)(27)(A).
19. Social Security Act § 1905(a)(A).
20. National Gains Center for People with Co-Occurring Disorders in the Justice System, Maintaining Medicaid Benefits for Jail Detainees with Co-Occurring Mental



Health and Substance Use Disorders (1999); Tim Westmoreland, Medicaid & HIV/AIDS Policy 15-17 (1999).

21. Ibid.

22. 42 C.F.R. § 435.916.

23. 42 C.F.R. § 435.1009(b).

24. 42 C.F.R. § 435.916.

25. Letter from HHS Secretary Donna Shalala to Congressman Charles Rangel, April 6, 2000.

26. Letter from Sue Kelly, Associate Regional Administration, Division of Medicaid and State Operations, HCFA Region II, to New York Medicaid Director, September 14, 2000.

27. The Social Security Administration sends state Medicaid agencies a notification that the person's status is now N-22, indicating confinement in jail or prison.

28. *Wakefield v. Thompson*, 177 F.3d 1160, 1164 (9th Cir. 1999).

29. *Brad H. v. City of New York*, 185 Misc.2d 420, 431 (N.Y. Sup. Ct. 2000), aff'd, 276 A.D.2d 440 (N.Y. App. Div. 2000).

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The Bazelon Center for Mental Health Law is the leading national legal-advocacy organization representing people with mental illness or mental retardation. Through precedent-setting litigation and in the public-policy arena, the center works to define and uphold the rights of adults and children who rely on public services and ensure them equal access to health and mental health care, education, housing and employment. The nonprofit organization is supported primarily by private foundations and individuals.